

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 9, 2006

D047529 Yates v. San Diego Education Association

Pursuant to California Rules of Court, rule 8, the appeal filed on November 7, 2005, is dismissed for appellant's failure to timely designate the record. (Cal. Rules of Court, rules 4(a) and 5(a)).

D047706 In re Marriage of Banks

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 1(c)(5)).

D046690 In re Alanna A., a Juvenile

The opinion filed on December 14, 2005, is ordered certified for publication.

D047063 In re Marriage of Bowen

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The case is dismissed.

D045686 Rulla v. State Farm Mutual Automobile Insurance Company

Petition for rehearing denied.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron
Clerk: D. Moore

D045971 Woods et al. v. Neptune Terrace Condominium Association et al.

Cause called on merits. Richard Martha, Esq. argued for respondent. Samy S. Henein, Esq. argued for appellant. Cause submitted.

Court recessed at 9:08 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

D044791 Patel v. City of El Centro et al.

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Gabriel Hedrick, Esq. argued for respondent. Cause submitted.

D045751 Kuperman v. Smith

Cause called on merits. Lawrence C. Kuperman, argued for appellant in pro per. Walter J. De Lorrell III, Esq. argued for respondent. Mr. Kuperman replied. Cause submitted.

Court recessed at 9:39 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 9, 2006 (Continued)

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D043499 Lukeman et al. v. Palomar Pomerado Health System et al.

Cause called on merits. Donald James Loftus, Esq. argued for appellant. Lisa Willhelm Cooney, Esq. argued for respondent, Palomar Pomerado Health System. Daniel S. Belsky, Esq. argued for respondent, Morris. Mr. Loftus replied. Cause submitted.

D042984 People v. Gehrke et al.

Cause called on merits. Robert E. Boyce, Esq. argued for appellant, Gehrke. Alisa A. Shorago, Esq. argued for appellant, Guffey. Michael Bacall, Esq. argued for appellant, Smith. Adrienne Denault, Deputy Attorney General argued for respondent. Mr. Bacall replied. Ms. Shorago replied. Cause submitted.

Court recessed at 2:41 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D045818 Friwat et al. v. Koo et al.

Cause called on merits. Gerald M. Shaw, Esq. argued for appellant. Larry G. Lushanko, Esq. argued for respondent. Mr. Shaw replied. Cause to be submitted at a later date.

Court recessed at 4:15 p.m. until Tuesday, January 10, 2006 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 10, 2006

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Terry O'Rourke and Joan Irion
Clerk: D. Moore

D046315 People v. Stone

Cause called on merits. Michael L. Crowley, Esq. argued for appellant. Raymond M. DiGuiseppe,
Deputy Attorney General argued for respondent. Mr. Crowley replied. Cause submitted.

Court recessed at 9:32 a.m. to change panel members. New panel members: The Honorable
Patricia Benke, Acting Presiding Justice, and The Honorable James McIntyre and Joan Irion

D045614 Tilaro v. Thorson

Cause called on merits. James J. Moneer, Esq. argued for appellant. Donovan Joseph Jacobs, Esq.
argued for respondent. Mr. Moneer replied. Cause submitted.

Court recessed at 10:10 a.m. until 1:30 p.m.

D046035 People v. Oliver

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Haller, J.

D047426 In re Brown on Habeas Corpus

The petition is denied.

D045774 Annette F. v. Sharon S.

The judgment is affirmed. Annette shall recover her costs on appeal. Nares, J.; We Concur: McConnell,
P.J., Aaron, J.

D046013 In re Eddie A., a Juvenile

The matter is remanded and the court is directed to set a maximum term of confinement based upon the
facts and circumstances that brought the minor before the juvenile court. In all other respects the
judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D046593 People v. Jones

The matter is remanded to the trial court for its correction of the abstract of judgment to show time served
of 84 days. A certified copy of the amended abstract of judgment shall be forwarded to the Department of
Corrections. In all other respects, the judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J.,
O'Rourke, J.

D045832 People v. Quintero

The judgment is affirmed. O'Rourke, J.; I Concur: Nares, Acting P.J.; I Concur in the Result: Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 10, 2006 (Continued)

D046071 People v. Pereau

The judgment is affirmed but for the stay of the prior prison term enhancements. The prior prison term enhancements are stricken and the trial court shall prepare and forward a copy of the amended abstract of judgment to the Department of Corrections. O'Rourke, J.; We Concur: Haller, Acting P.J., Aaron, J.

D045211 People v. Alvarez

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

D046680 In re Dustin R., a Juvenile

The judgment is reversed and the matter is remanded with instruction to enter a judgment denying the petition. McIntyre, Acting, P.J.; We Concur: Aaron, J., Irion, J.

D047438 Elwood-Garza v. City of San Diego et al.

Appellant's motion to vacate dismissal and reinstate appeal is granted. The order of dismissal is vacated and the appeal is reinstated.

D047528 McGlenn v. Grossmont Union High School District

Pursuant to California Rules of Court, rule 8, the appeal filed November 10, 2005, is dismissed for appellant's failure to timely designate the record.

D047256 Rhonda D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: Benke, Acting P.J., Huffman, J.

D047780 People v. Wimbley

The notice of appeal filed in San Diego Superior Court on December 29, 2005 has been read and considered by Presiding Justice McConnell and Associate Justices Nares and Irion. An order denying a request for postconviction DNA testing and appointment of counsel under Penal Code section 1405 is not appealable. The order is reviewable only by petition for a writ of mandate or prohibition. (Penal. Code, section 1405, subd. (j)). The appeal is dismissed.

D047427 In re Jenson on Habeas Corpus

The petition is denied.

D07440 Martino v. Superior Court of Imperial County/Meek

The petition is denied.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 10, 2006 (Continued)

D045890 Pizarro et al. v. Lamb's Players Theatre

Cause called on merits. Alfred Gerard Rava, Esq. argued for appellant. Ron A. Stormoen, Esq. argued for respondent. Mr Rava replied. Cause submitted.

Court recessed at 1:55 p.m. until Wednesday, January 11, 2006 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 11, 2006

D047202 Susan L. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. O'Rourke, J.; We Concur: McConnell, P.J., Nares, J.

D046006 McCallum v. Carlsbad Unified School District

Respondents' motion to dismiss this appeal is granted with prejudice. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D045809 Verne v. Dental Board of California

The writ of mandate is modified to require the Board at the reopened administrative proceedings: (1) to determine whether there is a reasonable possibility the anonymous caller might have information relevant to Dr. Verne's defense, and if so, to disclose the caller's identity absent competing interests that outweigh Dr. Verne's right to disclosure; and (2) to reconsider admission of exhibits A through G. As so modified, the judgment is affirmed. The Board to pay Dr. Verne's costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D046624 In re Z.R., a Juvenile

The order is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., Nares, J.

D045084 Lowe v. Lincoln

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D046009 Rogers v. San Diego County Regional Airport Authority

The judgment of dismissal is affirmed. Costs are awarded to respondents. Huffman, Acting, P.J.; We Concur: Haller, J. O'Rourke, J.

D045699 Bates v. Malvestuto

The petition for rehearing is denied.

D045021 People v. Silva

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D047659 Durbin v. The Superior Court of San Diego County/Parinello, Inc.

The petition is denied. The motion to consolidate is denied.

D047588 Bergan v. Hall et al.

Appellant Sharon Bergan filed an abandonment of her appeal in Superior Court on December 29, 2005. This court's December 29, 2005 order dismissing the appeal for failure to designate the record is vacated as moot.

D046307 In re Jesse R., a Juvenile

Appellant's petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 11, 2006 (Continued)

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. Moore

D044632 People v. Green

Cause called on merits. Dacia Burz, Esq. argued for appellant. Deana Bohenek, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 9:36 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

D045247 Thornburg v. Bactes Imaging Solutions, Inc.

Cause called on merits. Michael H. Fish, Esq. argued for appellant. James Kostas, Esq. was present in oral argument for appellant, but did not argue. Robert W. Hicks, Esq. argued for respondent. John Thomas McGlothlin, Esq. was present in oral argument for respondent, but did not argue. Mr. Fish replied. Cause to be submitted at a later date.

Court recessed at 10:19 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D044855 McGuire v. Pine Tree Lumber Company et al.

Cause called on merits. Darin L. Wessel, Esq. argued for appellant. Douglas S. Gilliland, Esq. argued for respondent. Mr. Wessel replied. Cause submitted.

Court recessed at 10:46 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D046322 Wellman v. Public Storage, Inc.

Cause called on merits. Stephen J. Estey, Esq. argued for appellant. Kyle Cruse, Esq. argued for respondent. Cause submitted.

Court recessed at 11:02 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D045152 Chuchua et al. v. Page et al.

Cause called on merits. Kent Bridwell, Esq. argued for appellant. Timothy Bryan Liebaert, Esq. argued for respondent. Mr. Bridwell replied. Cause submitted.

Court recessed at 11: 18 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 11, 2006 (Continued)

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares
Clerk: D. Moore

D045019 Equipment Source Company v. Stewart & Stevenson Services, Inc.

Cause called on merits. Scott L. Metzger, Esq. argued for appellant. L. B. Chip Edelson, esq. argued for respondent. Mr. Metzger replied. Cause submitted.

D045332 Krontz v. City of San Diego

Cause called on merits. A. Dale Manicom, Esq. argued for appellant. Mary Nuesca, Deputy City Attorney argued for respondent. Mr. Manicom replied. Cause submitted.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D045907 Hunter v. Department of Motor Vehicles

Cause called on merits. Patrick Ford, Esq. argued for appellant. Christopher A. Brewster, Deputy Attorney General argued for respondent. Cause submitted.

D046020 Platypus Wear, Inc. v. Cahill

Cause called on merits. Barry Levy, Esq. argued for appellant. Michael H. Riney, Esq. argued for respondent. Karen King, Esq. was present in oral argument for respondent, but did not argue. Mr. Levy replied. Cause submitted.

Court recessed at 3:45 p.m. until Thursday, January 12, 2006 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 12, 2006

D047462 In re Vaughn on Habeas Corpus

The petition is denied.

D047472 Washington v. The Superior Court of Imperial County/People

The petition is denied.

D047672 Cisneros v. The Superior Court of San Diego County/People

The petition is denied.

D045971 Woods et al. v. Neptune Terrace Condominium Association et al.

Order affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Aaron, J.

D045937 People v. Meadows

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D047779 Richison v. Superior Court of San Diego County/The People

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Cynthia Aaron
Clerk: D.Moore

D044951 People v. George

Cause called on merits. Daniel J. Kessler, Esq. argued for appellant. Quisteen Shum, Deputy Attorney
General argued for respondent. Mr. Kessler replied. Cause submitted.

Court recessed at 9:22 a.m. to change panel members. New panel members: The Honorable Richard
Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex
McDonald

D046406 In re Peyton C. et al., Juveniles

Cause called on merits. Joseph T. Tavano, Esq. argued for appellant, Jamie C. Christopher R. Booth,
Esq. argued for appellant, Andrew C. Suzanne Evans, Esq. argued for the minor. Paula Roach, Deputy
County Counsel argued for respondent. Cause submitted.

Court recessed at 9:57 a.m. to change panel members. New panel members: The Honorable
Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman
and Alex McDonald

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 12, 2006 (Continued)

D045960 Southern California Gas Company v. First State Insurance Company

Cause called on merits. Patrick M. Howe, Esq. argued for appellant. Gregory A. Post, Esq. was present in oral argument for appellant, but did not argue. Emily Wehbe, Esq. was present in oral argument for respondent, but did not argue. Jonathan S. Franklin, Esq. argued for respondent. Mr. Howe replied. Cause submitted.

Court adjourned at 10:19 a.m.

D045949 Jaramillo v. State Board for Geologists and Geophysicists

The judgment is affirmed. The Board shall recover from Jaramillo its costs on appeal. Nares, Acting, P.J.; We Concur: Haller, J., O'Rourke, J.

D043529 Schuelke, et al. v Conner

The judgment is affirmed. Aaron, J.; We Concur: Benke, Acting, P.J., Irion, J.

D046866 Advanced Marketing v. Superior Court of San Diego County/Federal Insurance Co.
Request for publication is denied.

D045703 In re Teahan on Habeas Corpus

This court's order denying petitioner's habeas corpus petition was final as to this court when it was filed on February 24, 2005. (Cal. Rules of Court, rule 24(b)(2)(A)). The court no longer has jurisdiction to rehear the matter. (Cal. Rules of Court, rules 24(c), 25(a)).

D045785 Shayota v. Christianson

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.

D046468 Meoli et al. v. Schechter et al.

Pursuant to the stipulation filed on December 21, 2005, the appeal is dismissed. The remittitur shall issue immediately. The parties are to bear their own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 13, 2006

D044792 Christie v. The City of El Centro et al.

The order granting a new trial is affirmed. Christie shall recover his costs on appeal. CERTIFIED FOR PUBLICATION Nares, J.;
We Concur: Benke, Acting P.J., McIntyre, J.

D044794 Garber v. Horton, Knox, Carter & Foote

The order granting Horton's special motion to strike is affirmed. Horton is awarded cost on appeal. Benke, J.; We Concur: McConnell, P.J., Haller, J.

D047737 Newmarket Underwriters Insurance Company v. Superior Court of San Diego County/Olympia & Chase et al.

The petition is denied.

D047128 In re Williams on Habeas Corpus

The petition is denied.

D044630 People v. Hurtado

The judgment is affirmed. Nares, J.; We Concur: McConne, P.J., Haller, J.

D047085 La Playa View Holdings, LLC et al. v. City of San Diego

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D047110 People v. Pyburn

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 30.3).

D046607 Paradise Valley Hospital et al v. Workers' Compensation Appeals Board of the State of California/Sangcap

The request for publication is denied.

D046607 Paradise Valley Hospital et al v. Workers' Compensation Appeals Board of the State of California/Sangcap

The opinion filed on December 23, 2005 is modified. There is no change in judgment. The petition for rehearing is denied.

D045691 People v. Pottorff

The order denying the motion to suppress the evidence and the judgment are affirmed. Nares, Acting P.J.; I Concur: Irion, J.; I Dissent: McDonald, J. (opinion)

D046792 People v. Smith

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Nares, J.

D047012 In re D. R., a Juvenile

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 13, 2006 (Continued)

D047637 Angel M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Angel M. has notified the court that a petition for writ of mandate under California Rules of Court, rule 38.1 and 1436.5 will not be filed as there are no viable issues for writ review. The case is dismissed.

D047835 Imperial Irrigation District v. Superior Court of San Diego County/Stiles

The petition is denied.

D047477 Williams v. Superior Court of San Diego County/Dr. Systems Inc., et al.

The petition is denied.

D047620 Thomas v. Superior Court of San Diego/People

The petition is denied.

D045555 The People v. Innovative Financial Services Inc., et al.

The court, on its own motion, orders rehearing. No further briefing is required. The case is deemed submitted as of this date.